

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

LYLE FRANCIS GALLAGHER
TX-1326850-G

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DOCKETED COMPLAINT NO.
07-085, 09-278, 10-294, 11-104,
12-115, 13-188, 13-302

AGREED FINAL ORDER

On the 22 day of Nov, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Lyle Francis Gallagher (the "Respondent").

In order to conclude this matter, Lyle Francis Gallagher neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order (the "Order"). The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent is a Texas state certified general real estate appraiser who holds certification number, TX-1326850-G, and was certified by the Board during all times material to the above-noted complaints.
2. Respondent appraised real property (collectively, "the properties") located at:
 - a. 6115 Sandydale Drive, Dallas, Texas 75248 (the "Sandydale property"), on or about April 14, 2006;
 - b. 6500 Round Springs Lane, Plano, Texas 75204 (the "Round Springs property"), on or about October 9, 2006;
 - c. 1605 Proctor Drive, Grand Prairie, Texas 75051 (the "Proctor property"), on or about October 16, 2007;
 - d. 2401 Vagas Street, Dallas, Texas 75219 (the "Vagas property"), on or about July 1, 2010;
 - e. 10531 Cromwell, Dallas, Texas 75229 (the "Cromwell property"), on or about February 18, 2011;
 - f. 626 Huntington Lane Allen, Collin County, Texas 75002 (the "Huntington property"), on or about February 12, 2010;
 - g. 117 Bent Creek Ranch Court, Fort Worth, Texas (the "Bent Creek property"), on or about July 16, 2011;
 - h. 3809 Melstone Drive, Arlington, Texas 76016 (the "Melstone property"), on or about March 13, 2013; and,
 - i. 1302 Aransas Drive, Euless, Texas 76039 (the "Aransas property"), on or about July 20, 2013.

3. Complaint number 07-085 was filed with the Board by Travis Morpew. Complaint, number 09-278 was filed with the Board by Deloris Kraft-Longoria based on a referral from the Texas Department of Insurance. Complaint number 10-294 was filed with the Board by Chase Bank. Complaint number 11-104 was filed with the Board by Steve Nichols. Complaint number 12-115 was staff-initiated. Complaint number 13-188 was filed with the Board by Ann Still. Complaint number 13-302 was filed with the Board by Dan Freitag. The Board reviewed the complaints to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.

5. As a result of the Board's investigation, the Board contends that Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3)¹ and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for the properties:

- a) USPAP Ethics Rule -- Respondent violated the Ethics Rule because he communicated assignment results in a misleading manner;
- b) USPAP Record Keeping Rule -- Respondent's failed to create and maintain a workfile containing all data, information, and documentation necessary to support his opinions and conclusions;
- c) USPAP Scope of Work Rule -- Respondent failed to support his work with the relevant evidence and logic required by this rule to obtain credible assignment results;
- d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) -- Respondent failed to identify and report significant and material information concerning the site description and improvements;
- e) USPAP Standards 1-2(e)(iv) and 2-2(b)(viii) -- Respondent failed to identify and report the specific zoning classification;
- f) USPAP Standards 1-3(a) and 2-2(b)(viii); 1-1(b) -- Respondent failed to identify and analyze factors affecting marketability (such as economic supply and demand, and market area trends) and failed to provide supporting documentation and a summary of his reasoning in support of these required analyses, conclusions and determinations which are necessary to reach a credible and reliable market value determination;

¹ Effective December 27th, 2010, this rule was renumbered to 22 TEX. ADMIN. CODE § 153.20(a)(6) without substantive changes.

- g) USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop a site value determination;
 - h) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to determine the cost new of improvements and failed to collect, verify, analyze and reconcile the cost new of improvements;
 - i) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to determine accrued depreciations and failed to collect, verify, analyze and reconcile the accrued depreciations;
 - j) USPAP Standards 1-4(a) and 2-2(b)(viii); 1-1(a) and 1-4(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Respondent did not provide appropriate supporting documentation nor his reasoning and a summary of his analysis of the sales comparison approach. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales he did use, and did not disclose his analysis and reasoning behind the adjustments he made or elected not to make;
 - k) USPAP Standards 1-5(a) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent failed to disclose, analyze and reconcile significant and material information regarding the properties' listing history, failed to disclose and analyze the contracts of sale and reconcile that information and data and failed to provide a summary of his supporting reasoning and analysis of all of this information and reconciliation;
 - l) USPAP Standards 1-5(b) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent negligently omitted material facts concerning a prior sale of certain properties and failed to disclose, analyze and reconcile this significant and material information (including summarizing any reasoning supporting any analyses, opinions and conclusions he may have made and failing to provide work file documentation in support of any analyses, opinions and conclusions he may have made) within the three (3) years prior to the effect date of each of the appraisal reports Respondent prepared for the properties;
 - m) USPAP Standards 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used;
 - n) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced appraisal reports for the properties that contained several substantial errors of omission or commission by not employing correct methods and techniques.
6. Respondent made material omissions of material fact with respect to his appraisal of the properties as detailed above.

7. The parties enter into this consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3)².

3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(9)³ by making material omissions of material fact.

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. OCC. CODE § 1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS**:

1. **EDUCATION.** On or before November 22, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**

a. A classroom course in USPAP, a minimum of fourteen (14) class hours, on or before November 22, 2014.

b. A classroom course on the sales comparison approach, a minimum of fourteen (14) class hours, on or before November 22, 2014.

c. A classroom course on market analysis, a minimum of fourteen (14) class hours, on or before November 22, 2014.

2. **MENTORSHIP.** On or before November 22, 2014. Respondent shall complete eight (8) hours of in-person mentorship conducted by a certified USPAP instructor

2 Effective December 27th, 2010, this rule was renumbered to 22 TEX. ADMIN. CODE § 153.20(a)(3) without substantive changes.

3 Effective December 27th, 2010, this rule was renumbered to 22 TEX. ADMIN. CODE § 153.20(a)(12) without substantive changes.

approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for the mentorship requirement. Respondent shall also submit a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees form on or before the due date listed for the mentorship requirement. **Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.** The eight (8) hours of mentorship shall include:

- a. Eight (8) hours of mentorship regarding the above-noted USPAP violations, on or before November 22, 2014.
3. **ADMINISTRATIVE PENALTY.** On or before December 12, 2013. Respondent shall pay to the Board an administrative penalty of five thousand dollars (\$5,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before December 12, 2013).
4. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and
5. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERMS IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A \$1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED, UNTIL RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE \$1,000 ADMINISTRATIVE PENALTY HAS BEEN RECEIVED BY THE BOARD.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's website.

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this agreed final order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the Texas Appraiser Licensing and Certification Board. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the board of all the necessary documents.

Respondent shall send all documents and payments necessary for compliance by: (1) email to compliance.talcb@talcb.texas.gov, (2) fax to (512) 936-3966, attn: Compliance, or (3) certified mail return receipt requested to Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE AND I AM AWARE OF MY RIGHT TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER (E.G. PAYMENT OF A PENALTY, COMPLETION OF REMEDIAL EDUCATION, OR FAILURE TO PROVIDE LOGS).

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 17th day of October, 2013.

A handwritten signature in black ink, appearing to read 'Lyle Francis Gallagher', is written over a horizontal line.

LYLE FRANCIS GALLAGHER

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this 17 day of October, 2013, by LYLE FRANCIS GALLAGHER, to certify which, witness my hand and official seal.

Monica Rae Arndt
Notary Public Signature



Monica Rae Arndt
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 18th day of October, 2013.

[Signature]
Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this 22 day of Nov, 2013.

[Signature]
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 22 day of Nov, 2013.

[Signature]
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board